

## LITIGATION

### ATTORNEY GENERAL LAWSUITS AGAINST TOBACCO INDUSTRY

#### SITUATION ANALYSIS/EXECUTIVE SUMMARY

- The Attorneys General in Mississippi, Minnesota, West Virginia, Massachusetts and the Governor of Florida have each filed lawsuits against the major cigarette manufacturers. Although each complaint alleges a different combination of theories, the essence of the complaints is that the states should be reimbursed by the tobacco industry for the costs of health care allegedly caused by smoking related illnesses. All of these lawsuits are pending in state court and all are in very early stages.

- In West Virginia, the court has dismissed eight of 10 claims against the companies and has ruled the state cannot employ private attorneys under a contingent fee contract.

- In Mississippi, the court denied the defendants' motions to dismiss and their motions to transfer to another court. The court granted the Attorney General's

motion to strike certain defenses *but is still considering whether taxes and other offsetting costs incurred or saved by the state should be*

- PM joined with other defendants to file motions to dismiss in West Virginia and

Minnesota. These motions are pending before the courts.

- In Florida, the state Supreme Court has heard arguments in our challenge to the 1994 Medicaid liability statute. We expect a ruling soon, and we're hopeful the court will uphold a trial judge's ruling that the state law cannot be used to impose liability for conduct that occurred before 1994.

- In Florida, Massachusetts and Texas, PM has filed suit proactively in order to challenge the states' legal theories and strategies.

#### Q&A

1. How does PM respond to the claims that the tobacco industry should reimburse the states for increased health costs?

- The radical theories of the Attorneys General are contrary to existing law and would deprive the tobacco industry of certain fundamental legal rights that currently exist for all defendants in a product liability case. Moreover, the same arguments made against the tobacco industry could also be applied to hundreds of products like <sup>meat,</sup> alcohol, butter, ~~hamburger~~, and pizza that arguably cause increased health costs.
  - The states participate in the sale of cigarettes and receive millions of dollars each year in excise taxes. Having willingly participated in the sale of cigarettes and accepted proceeds from the sale of a legal product, the states should not be permitted to recover for any alleged increased health costs to the general public.
  - There is no reason why the tobacco industry should be treated any differently than any other manufacturer of consumer goods. PM is confident that the courts will continue to require the plaintiffs to prove their claims by presenting proof that each individual Medicaid claimant's health costs were actually caused by smoking cigarettes and will permit the tobacco companies to present their traditional

Could work  
in the meat &  
obesity articles

defenses to those claims. As in the past, PM will mount a vigorous, aggressive defense and we fully ~~expect to~~ be successful.

*believe we will*

#### FLORIDA STATUTE RE: MEDICAID REIMBURSEMENT

##### SITUATION ANALYSIS/EXECUTIVE SUMMARY

- In the closing moments of the 1994 legislative session in Florida, a statute was enacted that authorized the Attorney General to sue for Medicaid reimbursement and declared that all of our traditional defenses, except preemption, are unavailable.
- PM has filed a lawsuit challenging the statute on constitutional grounds. The trial court upheld the statute's abrogation of affirmative defenses, but ruled that the statute cannot be employed to impose liability upon the companies for conduct that occurred before 1994. Both sides appealed the ruling, and ~~that case~~ <sup>July</sup> is now pending before the Florida Supreme Court.

*appeal*

##### Q&A

2. Why has PM challenged the Florida Third-Party Medicaid Liability Act?
  - The lawsuit was filed because PM believes the Florida statute is unconstitutional. Among other things, it violates the fundamental guarantees of due process of law under the Florida and US Constitutions. The Florida statute drastically alters traditional substantive and procedural protections of the law. The statute also attempts to revive claims that had been barred by the statute of limitations.

- The Florida statute's attempt to shift the cost of its Medicaid program to certain select manufacturers not otherwise liable is arbitrary, unfair, and unconstitutional.
- The statute was passed in such a way that the Florida legislature did not have an adequate opportunity to review and analyze it. The title of the bill referred solely to Medicaid provider fraud. There is no reference to the drastic modifications of due process contained in the bill. The Florida Constitution requires the title to be worded in such a way that it will not mislead a person as to the scope of the bill. Here the title appears to have been designed to mislead.
- In addition to seeking redress in the courts, PM has joined with other concerned manufacturers to pursue a legislative remedy as well. In May, the Florida House and Senate voted overwhelmingly to repeal this statute. Gov. Chiles vetoed the repeal, and the Legislature is planning a vote to override. *still the case??*

3. What is the company's strategy in the state Medicaid cases, where it appears that judges are prepared to deprive us of our traditional affirmative defenses. It's really not possible for us to win these cases without being able to call the smoker's awareness and freedom of choice into question, is it?

(A). We certainly face a different challenge in each of these five states that have filed Medicaid cases, but we have developed legal strategies that are proving to be effective. In West Virginia, for example, we have won the dismissal of eight of the state's 10 claims, and we also have won a ruling that ~~they disqualify~~ the private plaintiff's lawyers who are really driving the case.

*declares illegal the contract retraining*

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4. But you're having just the opposite experience in Mississippi and Minnesota, where the judges issuing ruling after ruling in the states' favor. Isn't the Mississippi case, for example, just a matter of time before a judgment is entered against the industry.

(A). It's true we've had some disappointing rulings in Mississippi, but that game is far from over. It is not true to say every ruling has gone against us. For example, we are now awaiting the judge's decision on the issue of whether the companies would be entitled to a setoff for the amount of money the state has collected in sales and excise taxes on the sale of cigarettes. As you know, the amounts collected in cigarette taxes -- \$42 million a year in Mississippi -- are far more than the state claims to have spent on Medicaid expenses.

(5). The companies have received a lot of publicity from the decision to sue Massachusetts and Texas before those states filed suit against us, but I have two questions about this strategy: Don't these preemptive suits backfire by insuring that the states will eventually file suit? And don't they open us up to allegations of using desperate, last-resort tactics even before the opening gun?

(A). First, I don't think we would consider filing suit against a state unless we thought we it was a virtual certainty that the attorney general had decided to sue us. Second, we haven't filed these suits lightly. In every case, we believe we have a valid claim that should be resolved as a preliminary matter, and that's what we're hoping to accomplish.

## CASTANO CLASS ACTION SUIT

### SITUATION ANALYSIS/EXECUTIVE SUMMARY

- On March 29, 1994, a class action was filed in federal court, in New Orleans, La., against major cigarette manufacturers, including PM.
- Plaintiffs allege that tobacco manufacturers "manipulate" the nicotine in their products in order to cause their customers to become addicted.
- On February 17, the trial court partially certified a class on some issues, but declined to certify other issues leaving them to be determined in individual cases.
- On July 26, the Fifth Circuit Court of Appeals agreed to review the certification order, and we expect the court will soon schedule a date for oral argument in the case.

### Q&A

- (6). How does PM respond to the Castano class action lawsuit?
- There is no merit to the allegation that PM "manipulates" the nicotine in our cigarettes. Nor is there any merit to the claim that the court should certify a class of "addicted" smokers.
  - The rationale for class actions does not apply to this situation and the trial court was wrong to certify any issues. A class action is appropriate to conserve judicial resources and the time and expense of litigation when the facts surrounding a large number of plaintiffs and the law governing those facts, are so similar that the cases can be tried together.

- Here, there are numerous individual issues relating to liability and damages which overwhelm the few common issues that might exist. The trial court has recognized that individual trials are required for each class member's claim before liability can be established.
- Certifying any issues in Castano will not resolve a litigation crisis -- it will create one.
- It should be noted that addition claims have been made in other cases, Cipollone for example, and the industry has prevailed on those claims.
- PM is appealing the trial court's partial certification of some issues.

7. In the Castano case, the company is facing some of the finest plaintiffs' lawyers in the country. They're very experienced, and they're very committed -- they're putting up a reported \$100,000 a year per firm to bankroll the expenses of fighting you. From a business standpoint, doesn't it make sense to revisit the "no settlement" stance and at least hold exploratory talks to see if there isn't some way to settle the case and, at the same time, preserve our company?

(A). Your question assumes that the plaintiffs in Castano have a legitimate case, and I don't happen to believe they do. In the American legal system, there is a fine line between aggressively pressing a class-action case and extortion, and we have no intention of being a party to that. No, we don't plan to explore a settlement for the simple reason that we believe we are right and that we expect to win.

8. What are the company's plans if the Fifth Circuit decides that Judge Jones

properly certified the class and you have to go to trial on the issue of addiction.

Wouldn't that change your position on settling?

(A). No, it wouldn't. First, I don't believe the Fifth Circuit is going to affirm the partial class certification. I believe the whole class-action concept in a case like this is unworkable to the point of absurdity. ~~Beyond that, I'm not going to speculate.~~

#### ENGLE V. PM COMPANIES INC. - CLASS ACTION SUIT

##### SITUATION ANALYSIS/EXECUTIVE SUMMARY

- On October 28, 1994, a Florida state trial court certified a class of all smokers who have diseases, or died from diseases, allegedly resulting from their addiction to cigarettes containing nicotine.
- As in Broin, this case has been appealed to the Florida Third District of Appeal. *the Fifth Circuit's class action*
- The number of potential claimants is in the tens of millions.

##### Q&A

9. How does PM respond to the certification of the class?
  - We have appealed the trial court's decision and believe that it will eventually be reversed.
  - We have strong arguments that the case should not be allowed to proceed as a class action. A class should not be certified if individual issues predominate over common ones, or if the trial of the case would be unmanageable. Here, individual issues relating to liability and damages for each class member predominate over the few

common issues that might exist.

- The class is not manageable. Assuming a class of only 2 million members and assuming each individual could present his claim and the tobacco companies could present their defenses in only 30 minutes, a court that spent 8 hours a day, 5 days a week, 52 weeks a year devoted to that case would take 480 years to complete the process. Of course, here the proposed class could include tens of millions of claimants and each claimant would certainly require more than thirty minutes to resolve the claim. It is difficult to imagine a more unmanageable class action.

10. What happens if the trial court's decision to certify the class is not reversed on appeal?

- If PM is not successful on appeal, we still have strong defenses in any trial on the merits. All of our traditional defenses should be available — preemption, assumption of the risk, contributory negligence — to name a few.
- Addiction and injuries allegedly sustained as a result of smoking are the central claims in Engle and we have successfully defended such claims in the past. For over 40 years, juries have concluded that plaintiffs could have stopped smoking if they chose to do so, and we expect juries will continue to recognize that common sense fact. In addition, juries have concluded that smokers, who are well aware of the claimed health effects of smoking, should not be awarded

damages for their voluntary choice to smoke.

11. The Castano case has gotten all the publicity, but there are two other, very serious, class actions in Florida. Don't these cases pose serious long-term risks for the company?

A. We're taking these two cases, the Engle case and the Broin case, very seriously. But just as in Castano, we believe we should prevail in these cases as well. As you know, the Engle case is a class action made up of people who allegedly have become ill as a result of smoking, while Broin is a class action made up of flight attendants who blame ETS for various illnesses. *As even the Court has recognized,*  
The important thing to remember is each of these class actions is that we will have the right to investigate every single class member to test the validity of his or her claim. *a trial of*  
*claim* *proofs* *claim* *That's why I*  
believe we will prevail. For more than 40 years, juries have refused to award damages once they heard evidence about how the plaintiffs were aware of the risks of smoking. And I believe that in the ETS cases, juries will see that the evidence necessary to prove that a wide variety of diseases was caused by breathing smoke in the air just does not exist.

## **PM's LAWSUIT AGAINST THE EPA**

### **SITUATION ANALYSIS/EXECUTIVE SUMMARY**

- In January 1993 the U.S. Environmental Protection Agency (EPA) issued a report claiming that tobacco smoke in the air increases the risk of lung cancer in non-smokers. The EPA report was based upon a review and statistical analysis of selected research studies.

- As a result of its findings, the EPA added ETS to its list of "Group A carcinogens," a list of substances "known to cause cancer in humans".
  - <sup>promptly</sup> PM ~~has~~ filed suit against the EPA in federal court, seeking to force the agency to withdraw its classification of ETS as a "known human carcinogen."
- We are now awaiting a ruling on our motion to conduct discovery of information the EPA is seeking to withhold, information we believe is very supportive of our position. After <sup>our motion</sup> ~~this matter~~ is resolved, we expect to ask the court to make its final decision.

#### Q&A

- 12 Why has PM filed a lawsuit against the EPA?
- We have filed suit against the EPA in order to force the Agency to withdraw its classification of ETS as a "known human carcinogen." We believe the EPA's report on environmental tobacco smoke is seriously flawed.
  - There are numerous basic concerns about the EPA report:
    - The Agency did no research of its own.
    - It failed to follow its own risk assessment guidelines.
    - It combined the data of other researchers using a questionable statistical technique known as "meta-analysis."
    - The EPA lowered its own standards of statistical significance to achieve a result we think was politically motivated.
    - The Agency failed to include data from studies that would have

In May 1995, the court issued a mixed ruling on another round of legal motions that EPA filed to avoid disclosing facts and proceeding to trial. The good news is that the court found the plaintiffs have the right to so-called standing in legal jargon. The disappointing news is that the court will not allow a full trial or full discovery of information from EPA.

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discovery as <sup>but refused to</sup>  
<sup>allow a full trial or full</sup>  
<sup>we had no real</sup>  
prevented EPA from classifying ETS as a "Group A"  
carcinogen.

13. What is the current status of the lawsuit against the EPA?
- The Court has denied the EPA's two motions to dismiss our lawsuit.
  - We are now awaiting a ruling on our motion to conduct discovery of information the EPA is seeking to withhold, information we believe is very supportive of our position. After this matter is resolved, we expect to ask the court to make its final decision.
14. Does PM expect to win its lawsuit against the EPA?
- No one can predict with certainty the outcome of a legal action of this kind. <sup>continue to</sup> We have a strong case, and believe we should win.

<sup>brought the case because we believed we</sup>  
<sup>were right</sup>

#### NUMBER OF ETS CASES

15. Have there been more lawsuits as a result of the EPA report of January 7, 1993, putting ETS on the EPA's Group A carcinogen list?

- At present (as of 1/1/96) there are 12 cases pending against the industry, and PM Incorporated is involved in all of them. Of those cases, 9 were filed after the EPA risk assessment was published. Frequent references are made to the EPA risk assessment. While one can't say that the EPA report was the sole factor driving these new lawsuits, clearly that report had considerable impact on the filing of the suits. While no one can predict the outcome of a specific case, we do not

Note:  
It may be possible to buttress this by looking at the number of cases filed in 1993, 1994 & 1995. My bet is that ETS filings are declining, especially if you evaluate pro se cases. Tim Willis can help

think plaintiffs will be successful in these cases because we believe the scientific evidence does not support such claims.

**BROIN V. PM COMPANIES INC. -- FLIGHT ATTENDANTS CLASS ACTION ETS LAWSUIT**

**SITUATION ANALYSIS/EXECUTIVE SUMMARY**

- This suit was filed in state court in Miami, Florida, on October 31, 1991. There are 25 defendants, including several PM entities and the other five major cigarette manufacturers.
- Plaintiffs are flight attendants who allege they have been injured by exposure to environmental tobacco smoke (ETS) in aircraft cabins.
- On December 12, 1994, the trial court certified a class action on behalf of "approximately 60,000 non-smoking flight attendants currently and formerly employed by airlines based in the US and who were injured as a result of inhaling smoke from cigarettes smoked by passengers in airplane cabins."
- The Third District Court of Appeal has affirmed the class certification, and we will ask for a rehearing of the case.

**Q&A**

16. What is happening in the Broin Case?
- A panel of the Third District Court of Appeal has affirmed the class certification. The decision contained no legal analysis and did not address the serious concerns stated by the trial judge, who said an ultimate resolution of the case could require 60,000 individual trials. We are asking for a rehearing of the appeal, and we believe the case

should ultimately be decided by the Florida Supreme Court.

- The rationale for class actions is to conserve judicial resources and the time and expense of litigation when the facts surrounding a large number of plaintiffs, and the law governing those facts are so similar that the cases can be tried together. That is not the situation here. The numerous individual issues far outweigh any common issues that might exist.
- While certifying the class, the trial court recognized that each claimant in the class must prove in individual trials that any injuries were caused by ETS. This alone should have been sufficient to have the trial court's decision reversed on appeal.
- If our appeal is denied, we feel we will have a strong case at trial. We do not believe that the scientific evidence supports the plaintiffs' claims that ETS caused their injuries.

*all the feel*

17. Now that the appeals court has upheld the class certification in Broin, do you still believe PM will prevail in that case?

- Yes. We are seeking a rehearing of the appeals court order.
- Even if the certification as a class stands, the judge has indicated that each defendant in the class could still have to prove that he or she suffered ill health as a direct and sole result of ETS exposure on the job. We believe this will be difficult if not impossible to prove.

**DAY ONE CHARGE TOBACCO COMPANIES "SPIKE" CIGARETTES WITH NICOTINE**

## TO KEEP SMOKERS "ADDICTED"

### SITUATION ANALYSIS/EXECUTIVE SUMMARY

- On February 28, March 7, and March 28, 1994, the ABC news program *Day One* alleged that cigarette manufacturers artificially "spike" their products with significant amounts of extraneous nicotine.
- On March 24, 1994, PM initiated a libel suit against ABC. In the complaint PM charges that ABC knowingly made a number of false allegations against PM and that both PM Companies Inc. and PM USA have been severely damaged by the false and defamatory statements made by ABC.

### Q&A

18. PM settled the case in return for an apology that many say is "narrowly worded." How does the company respond to the network's position that the thrust of its allegations are true?

- ~~The apology statement speaks for itself, and we accept the apology.~~
- We have always said that the spiking charge is absolutely false.
- PM does not, as ABC charged, "fortify" its cigarettes with substantial amounts of extra nicotine.
- Nicotine occurs naturally in tobacco. In fact, nicotine levels in raw, unprocessed tobacco are higher than those found in the reconstituted tobacco sheet that goes into our products and in the finished cigarette.
- In response to consumer preferences, the overall nicotine delivery in our cigarettes has declined by more than 50% over the last 40 years.
- We manufacture products covering a range of tar and nicotine levels.

that copies are available  
on the [ ]

Tar and nicotine yields are published in all of our advertisements.

***We also must monitor the manufacturing process to ensure that the brands we manufacture are consistent in their tar and nicotine yields.***

Now?  
If so,  
I would  
eliminate.

19. Is there any distinction in regulatory terms between regulating the levels of nicotine and regulating the levels of caffeine?

- No. Except caffeine levels are not published in all advertisements, as is the case with tar and nicotine yields. We do not regulate or control levels of nicotine. We control for "tar", and nicotine levels follow "tar."
- Both caffeine and nicotine are naturally occurring substances found in coffee beans and tobacco, respectively.
- Manufacturers of these products produce coffee and cigarettes with varying yields of these substances reflecting a wide variety of consumer preferences.
- Federal Government does not regulate the amount of the substances in these products but the FTC requires that all cigarette brands be tested for tar and nicotine levels and, as previously stated, all cigarette advertisements must list the tar and nicotine yields.

Was PM paid 15 million by ABC?  
• I am limited in ability to respond.

#### INTERNATIONAL

20. What is the level of litigation outside of the US?

- Minimal amount of litigation activity.
- US legal system differs from others in two important aspects:
  - Contingency fees
  - Punitive damages
- In the UK, anti-tobacco activists have recently been granted limited government funded legal aid to investigate potential claims against the industry. No legal aid has been granted to file lawsuits.
- In 1995, a class action lawsuit was filed and served in Toronto, Canada against the three major cigarette manufacturers; Imperial, RJR-MacDonald and Rothmans, Benson & Hedges.
- There is also a smoking and health case pending in Italy against the Italian monopoly and one in Japan against Japan Tobacco.
- In South America, individual cases have been filed in Argentina, and a class-action case has been filed in Brazil.
- A limited number of other lawsuits are pending internationally.

21. Does PM have any critical lawsuits pending outside the US?

- ~~A~~ class action lawsuit has been filed in Toronto, Canada <sup>and</sup> Brazil.
- The allegations are similar to those in the Castano case and, like Castano, we believe those allegations are fatally flawed. The case will be defended vigorously.

#### NATURE OF LAWSUITS

22. Why are there so many tobacco liability lawsuits in the news again?
- Litigation has been a fact of life in the tobacco industry for more than 40 years. But it is also a fact that we have never paid one penny in damages in all that time.
  - Some new cases have drawn media attention because they are somewhat different from past cases. Nevertheless, the fundamental issues remain the same, and we believe we will win these suits for many of the same reasons.
23. How are these new lawsuits different from those in the past?
- There are three types of cases against the industry that have caught the public's attention lately: class action lawsuits; actions filed by state attorneys general to recover state Medicaid expenditures; and suits based on exposure to environmental tobacco smoke — ETS — the most prominent of which is also a class action.

### Class Action Lawsuits

24. What are class action lawsuits?
- A class action is a procedural device whereby one or more members of group may sue as representatives of all the members of the group.
25. How many product liability class action suits are proceeding against the industry in the US? What do they allege?
- Currently there are three class-action suits. Two of them attempt to form a class out of smokers who have allegedly become "addicted" to

*but all of them were filed in 1994.*

*Smoking and health*

In Texas, a suit alleging personal injury on behalf of a purported class of smokers of "filtered products" is pending.

nicotine or suffered some alleged health consequence as a result.

FILED IN 1992

- The third case involves a group of flight attendants who claim that exposure to ETS on airline flights has harmed their health.

- In addition, ~~four class-action~~ <sup>three</sup> cases <sup>were</sup> ~~have been~~ <sup>as class actions</sup> filed as a result of the recall. Two of those cases (Walton, Sansone) have been dismissed. The third

- In Maryland, a lawsuit has been filed seeking class-action status on behalf of persons injured as a result of defendant's "failure to

manufacture a fire-safe cigarette since 1987."

*Not certified, has not been certified as a class action by the court, at this time, born*

26. Do you believe PM will prevail in these ~~any~~ outstanding class-action lawsuits?

- Yes. All of the class action suits outstanding against PM are without substance or merit.
- First, plaintiffs must define the members of the class on whose behalf they are attempting to sue in a way that is acceptable to the courts. That is very difficult when it comes to ambiguous concepts like "addiction" to nicotine.
- Also, even if plaintiffs are successful in being recognized by the courts as a class, they must still prove that wrongful conduct by the tobacco industry caused their alleged "addiction." <sup>or other injury</sup> That, too, will be difficult, <sup>Philip Morris</sup> not least because the industry has done nothing wrong.
- In addition, claims that people became "addicted" <sup>or injured in fires</sup> due to wrongdoing by the industry should be determined individually, making the class action virtually unmanageable.

*we have moved to*

19 *dismiss the class suit on legal grounds*

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#### TOBACCO LITIGATION IMPACT ON OPERATIONS

27. Is there any danger that an adverse outcome of the smoking and health litigation against the tobacco company will affect the other operations of PM Companies?
- The company altered its corporate structure in 1985 to reflect more accurately the breadth of its geographic operations and business diversification.
  - The operating companies now exist as first tier subsidiaries of the parent company. Each is operated separately, reporting its financial results to the parent.
  - The company's tobacco subsidiary, PM Incorporated, believes, and has been so advised by counsel, that it has a number of valid defenses including preemption, as decided in 1992 by the US Supreme Court in Cipollone. PM Inc. will continue to vigorously defend all such cases.
  - Admittedly, it is not possible to predict the outcome of this or any other litigation.
  - Management is unable to make a meaningful estimate of the amount or range of loss that could result from an unfavorable outcome of all pending litigation. It is possible that the company's operating results or cash flows in a particular quarterly or annual period, or its financial position, could be materially affected by an ultimately unfavorable outcome of certain pending litigation. Management believes,

however, that the ultimate outcome of all pending litigation should not have a material adverse effect on the company's financial position.

28. Is the issue of ETS in child custody cases going to have an impact on PM's tobacco business?
- It shouldn't. There are only a few such cases and even in those, smoking has been only one factor taken into consideration. We think it is improper for people who want to ban smoking to inject the issue of family break-ups into the debate.

#### PRODUCT LIABILITY

29. How many smoking and health product liability suits are pending against PM? Against the cigarette industry?
- As of 1/1/96, there are 199 suits pending against the industry, including 128 against PM.
30. What defenses has PM asserted in response to existing smoking and health product liability suits?
- Among the defenses are:
    - (a) Federal preemption;
    - (b) General causation – does smoking cause disease;
    - (c) Specific causation – did smoking cause this plaintiff's disease; and
    - (d) Contributory fault – did the plaintiff smoke while aware of the claimed health effects of cigarette smoking.

## FINANCIAL RISK

31. Have adequate reserves been established to reduce the financial risks associated with pending and future smoking and health product liability suits?
- Because of our success in defending these suits, we do not presently believe that the pending suits will have a material adverse effect upon the financial condition of the company, and, accordingly, have established no reserves for potential adverse outcomes. We are constantly reviewing our reserve requirements, and will take action if and when it becomes appropriate.

## ASBESTOS

32. How many asbestos cases are pending in which cigarette manufacturers have been named defendants? Will those cases be more difficult for PM to win?
- There are 16 lawsuits pending against cigarette manufacturers in which asbestos-related companies are also defendants.
  - The issues in these cases are similar to those against the cigarette manufacturers only, and therefore, while the outcomes are not certain, we are optimistic about the results.

## PRODUCT DEFECTS

33. Why does PM oppose legislation to limit the ability of trial courts to issue protective orders in litigation that keeps information about product defects or other public hazards away from the public?
- Existing court rules grant trial judges the discretion to issue protective orders and keep information confidential or not to issue protective

orders depending on the facts in each case. This allows protection from public disclosure of trade secrets and personal medical records, or other confidential information produced during the discovery process, and not introduced at trial, which could be taken out of context. All information which becomes evidence during a trial is made public.

- The plaintiff's bar hasn't shown that trial judges are abusing this discretion, so other legislation is simply unnecessary.
- In any event, Government departments and agencies such as the Department of Justice, HHS, the FTC, FDA, and FCC have access to such information in order to protect the interests of the public.

#### BROWN & WILLIAMSON DOCUMENTS

34.. What is PM's position on the Brown & Williamson documents that allegedly contain statements by B&W executives concerning the addictive qualities of nicotine?

- We have nothing to say about the Brown & Williamson documents.

*Other options:*

- Brown & Williamson continues to assert a claim of privilege as to the documents and we do not think it would be appropriate to mount.
- I have read even the documents and therefore have nothing to say

## LITIGATION — *SECONDARY QUESTIONS*

### SHAREHOLDER LAWSUIT AGAINST PM RE: SUPPRESSION OF EVIDENCE ON NICOTINE

#### SITUATION ANALYSIS/EXECUTIVE SUMMARY

- On April 5, 1994, a shareholders' class-action lawsuit was filed against PM in Manhattan federal court charging that the company had violated securities laws.
- The suit, filed by William Steiner, charges that:
  - PM intended to deceive the investing public by making statements that cigarettes were not addictive and failing to disclose evidence it had to the contrary.
  - PM attempted to mislead the FDA to avoid stringent regulation that would affect costs and profitability.
- On September 7, 1994, the State Board of Administration of Florida filed a similar lawsuit. These cases have been consolidated and PM has moved to dismiss the complaints because they fail to state a legally recognized claim. PM is awaiting a ruling from the Court.
- On September 11, 1995, the court dismissed the two suits in their entirety, but granted the State Board leave to replead one of its claims.
- ~~We expect there will be an appeal of this dismissal.~~

CLASS ACTION LAWSUIT AGAINST TOBACCO INDUSTRY RE: NICOTINE  
SHAREHOLDER CLASS ACTION LAWSUIT AGAINST PM RE: "TRADE

## LOADING"

### SITUATION ANALYSIS/EXECUTIVE SUMMARY

- On April 4, 1994, a shareholders' class action lawsuit was filed against PM, Hamish Maxwell, Michael A. Miles, R. William Murray and William I. Campbell in the Federal Court for the Eastern District of New York.
- The suit alleges violations of the Securities Exchange Act, and was brought on behalf of all persons who purchased PM shares during the period July 10, 1991 through April 1, 1993.
- Specifically, the suit alleges the company artificially maintained high levels of profitability during 1991 and 1992 through "trade loading," (i.e., shipping more inventory than was needed to satisfy market demand).
- Plaintiffs allege that PM's 1993 pricing initiatives were caused in large part by excess inventory built up as a result of trade loading.
- The complaint also alleges that because the company did not disclose the extent and significance of the loading, investors were misled into believing the company's profitability was higher than it actually was, once the excess inventory was taken into account.
- PM's motion to dismiss was denied in December, 1994.
- In August 1995, the District Court granted plaintiffs' motion for class certification, and the motion is pending before the court.

### Q&A

35. How does PM respond to the shareholder class action lawsuit which alleges the company inflated profits through "trade loading" in 1991 and 1992? Is it true that shipping excess inventory in 1991 and 1992, led to PM cutting the price of Marlboro and other premium brands in 1993?

- PM's 1993 pricing initiatives had nothing to do with "trade loading."

Rather, they were a direct response to the growth of the discount segment at the expense of premium brands.

- PM's actions reducing prices of premium brands in 1993 were undertaken to narrow the price gap between our premium products and competing discount products to a point where consumers would once again base their purchases on brand quality, imagery and preference, rather than on price alone.
- That strategy has been a terrific success. By the end of 1994, Marlboro held 29.4% of the retail market, reversing previous share losses and preserving brand equity.
- Our other premium brands, in aggregate, were up [TK%] from August, when we reduced their wholesale list prices.

### **IN RE PHILIP MORRIS SECURITIES LITIGATION/MARLBORO FRIDAY**

36. We have heard about In Re Philip Morris Securities Litigation. What is it, and

what is its posture?

- On April 2, 1993, PM Companies Inc. and certain of its officers were named as defendants in the first of several purported shareholder class actions which were filed and later consolidated in the US District Court for the Southern District of NY as In Re Philip Morris Securities Litigation.
- These lawsuits alleged that the company violated federal securities laws by making false and misleading statements concerning the effects of discount cigarettes on the company's premium tobacco business in the period January 7 to April 2, 1993, the latter of these being the date upon which the company announced changes in its marketing and pricing strategies for both premium and discount brands.
- The court heard oral arguments on defendants' Motion to Dismiss on December 3, 1993.
- In January, 1995, the court granted our motion and dismissed the case. Plaintiffs have appealed the dismissal, and on Sept. 12, 1995, the Second Circuit heard oral argument. The case is pending before the appeals court.

#### GRAND JURY

37. What is going on with the investigation being conducted by the US Attorney for the Eastern District of New York into allegations of industry misconduct?

- It is our policy not to comment on pending legal investigations.

**Note:** PM USA has been advised that there is a grand jury investigation being conducted by the US Attorney for the Eastern

District of New York which is looking into possible violations of criminal law in connection with activities relating to the Council for Tobacco Research - USA, Inc., of which PM USA is a sponsor. The outcome of this investigation cannot be predicted.

**Allene Roberts**

38. In the later portion of 1992 you terminated Allene Roberts, a black woman who had 25 years with the company, building successfully a good reputation for PM with minority constituencies all over the country. We understand that she was asked to leave and was escorted from the building. Is this an example of the company's commitment to diversity for long-term minority employees?

**CONFIDENTIAL:** (Allene Roberts was a Manager of Public Programs in the Corporate Affairs Department and a 25-year employee. She was terminated in November 1992. In December, she sued the company alleging race and sex discrimination and defamation of character).

- No. This matter relates only to one former employee, Mrs. Roberts, and in no way affects PM's total commitment to diversity within its workplace.
- Regrettably, Mrs. Roberts was let go after a general audit of her department which focused partially on the activities and practices of the people in that department. Questions were raised about her activities and practices. Specifically, those questions related to violations of expenses and contracting policies to which all our

employees, with 25 days or 25 years of tenure, must adhere.

- It was in consideration of her 25 years of dedicated service that she was given months to resolve the questions. In the end, Mrs. Roberts' positive accomplishments could not be permitted to offset apparent misconduct which was discovered in the audit and which was discussed with her in great detail before the action was taken.
- We are well aware that over the years while she worked for PM, Allene Roberts made many friends for this company. She did so by representing accurately to the community PM's commitment to social and economic justice. We hope that whatever the outcome of the litigation with Ms. Roberts, those friendships based on that commitment can endure. (The case is still pending, and discovery is proceeding.)

#### **AMERICANS WITH DISABILITIES ACT / ETS**

39. General response to questions concerning the current litigation against McDonald's and other fast food restaurants on ETS.
- The Americans With Disabilities Act (ADA) requires public places and employers to reasonably accommodate persons with disabilities. To our knowledge, no court has ever held that smoking must be banned to reasonably accommodate persons who claim sensitivity to environmental tobacco smoke.

- To the contrary, in cases we are aware of, courts have consistently held that nonsmokers were reasonably accommodated without a smoking ban. Moreover, there have been cases where the court has refused to recognize claimed sensitivity to ETS as a disability under the ADA.
- As importantly, the ADA does not require proprietors of public places or employers, in trying to accommodate persons with a disability, to alter the manner in which the business is operated so as to prevent business from being conducted. For example, in a recent ADA-type case, a court refused to order a nightclub owner to ban smoking.
- With regard to the McDonald's case, the District Court in Connecticut will soon hear the plaintiffs evidence, as well as evidence of all the reasonable alternatives for accommodation such establishments have to an outright ban on smoking. Though we are not a party to that litigation, we are confident that the trial court will not break with the established legal precedents on this issue.